80091-0

NO. _____

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner

v.

REYES RIOS RUIZ and JESUS DAVID BUELNA VALDEZ,
Respondents.

FROM THE COURT OF APPEALS, DIVISION II – NO. 33647-2-II
(consolidated with No. 33653-7-II)
CLARK COUNTY SUPERIOR COURT

MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

The Petitioner in this matter is the State of Washington.

II. CITATION TO COURT OF APPEALS DECISION

The Petitioner, State of Washington, is requesting consideration by this court concerning an opinion filed by the Court of Appeals, Division II, on February 13, 2007, under consolidated Case No. 33647-2-II and 33653-7-II which reversed the trial court and suppressed evidence as it relates to the defendants in their direct appeal. The State of Washington had filed a motion for reconsideration of the court's decision terminating review. The order denying motion to reconsider was filed by Division II on April 3, 2007. A copy of the decision from the Court of Appeals, Division II is attached hereto and by this reference incorporated herein.

III. ISSUES PRESENTED FOR REVIEW

The decision in Division II reversed the finding of guilt on both defendants and required a remand with instructions to suppress the evidence seized. The issue that was raised on direct appeal dealt with a search incident to a warrant arrest of the driver of an automobile, Mr. Valdez. Mr. Ruiz, the co-defendant, was a passenger in the automobile at the time of the driver's arrest.

This matter was handled at the Superior Court level by way of stipulated facts and bench trial. Four sets of documents were entered that completely set out the nature of the facts in this particular case. Those documents are attached hereto and by this reference incorporated herein. The documents are as follows:

(1) Finding of Fact and Conclusions of Law on CrR3.5/3.6 Hearing (Ruiz, CP 34; Valdez, Cp 37).

(2) Findings of Fact and Conclusions of Law on Non-Jury Trial (Ruiz and Valdez, CP 48).

(3) Stipulated Facts on Non-Jury Trial (Ruiz, CP 45; Valdez, CP 55).

(4) Stipulation Regarding Evidence on Non-Jury Trial (Ruiz, CP 43; Valdez, CP 46).

The State submits that the Petition for Review should be accepted by the Supreme Court because the decision of the Court of Appeals, Division II is in conflict with the decision of the State Supreme Court in State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986). Further, the decision by the Court of Appeals, Division II is in conflict with a decision of the Court of Appeals, Division I, titled State v. Boursaw, 94 Wn. App. 629, 976 P.2d 130 (1999).

Further, the decision from the Court of Appeals, Division II specifically draws into question the scope of a valid search incident to an arrest and relating specifically to the searching of a passenger compartment of an automobile incident to the arrest of an occupant. The State further submits that this issue is of substantial public interest that should be determined by the Supreme Court.

IV. STATEMENT OF THE CASE

The sets of Findings of Fact and Conclusions of Law and Stipulations that are attached as appendices hereto set forth the basic statement of the case. The rule in Washington is that challenged findings entered after a suppression hearing that are supported by substantial evidence are binding, and, where the findings are challenged, they are verities on appeal. None of the findings of fact entered in this matter were contested by either side. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994); State v. Broadaway, 133 Wn.2d 118, 130, 942 P.2d 363 (1997).

In our case, on May 10, 2005, at approximately 9:45 p.m. Deputy Tom Dennison of the Clark County Sheriff's Department observed a 1995 Chevy Lumina minivan turning northbound onto NE 15th Avenue from the parking lot of an apartment complex. Deputy Dennison noticed that the driver's side headlight on the vehicle was not working. Deputy Dennison

stopped the vehicle, which bore Idaho license plates, and contacted the driver. The driver produced Washington State Identification which identified him as Jesus David Buelna Valdez.

Deputy Dennison asked Valdez if he had a driver's license. Valdez replied that he did not. Deputy Dennison explained why he had stopped Valdez and asked where he was coming from. Valdez replied "Fourth Plain." When asked, Valdez did not give a specific address. Since Dennison had just seen the vehicle leave the apartment parking lot, he asked again where Valdez was coming from. This time Valdez replied "Las Vegas."

Deputy Dennison returned to his vehicle and contacted dispatch for a records check of the defendant using the information on Valdez' identification card. He was notified by dispatch that there was a felony warrant for a person with that name. At that time, Deputy Boyle arrived at the scene.

In an effort to confirm whether Valdez was the wanted person, Deputy Dennison obtained from dispatch a social security number and a list of several tattoos listed on the warrant for the wanted person. The social security matched that on the identification, and the listed tattoos also matched Valdez. At 8:05 p.m., Deputy Dennison placed Valdez

under arrest for the outstanding warrant, handcuffed him and put him in the back of his patrol car. He told Valdez that he was going to search the vehicle.

Deputy Dennison had the male passenger in the vehicle get out. He began searching the passenger compartment of the vehicle. He located some plastic panels under the dash which were loose and appeared to have been tampered with by the removal of screws and plastic fasteners. The presence of the loose panels together with Valdez' inconsistent statements about where he was coming from prompted Deputy Dennison to suspect that drugs may be concealed in the vehicle, so he asked that a narcotics detection dog be sent to the scene. Deputy Ellithorpe and canine Eiko arrived at approximately 8:20 p.m.

The vehicle was a minivan containing three rows of seats. Two front bucket style seats with a walk space between them allowed access to the rear passenger area. In the rear passenger area the second row of seats consisted of three seats and behind that two additional seats abreast. All of the seats in the rear passenger area had fold down seat backs. There were blankets, clothing, and empty drink containers and food wrappers strewn about the interior of the vehicle.

Deputy Ellithorpe assessed the vehicle and noted the loose dash panels. He also noted that the door panels appeared to have also been

tampered with. Eiko is a certified narcotics detection dog. Ellithorpe and Eiko conducted an exterior and interior check of the vehicle. Eiko alerted on the inside wall on the driver's side of the rear passenger compartment, next to the seat. Deputy Ellithorpe looked at the area and noticed a loose plastic cup holder panel which appeared to have been tampered with. He lifted the plastic cup holder and observed a sheet of vehicle insulation that appeared to have been loosely set in the opening. He lifted the sheet of insulation and observed two packages, each approximately 4" wide, 3" tall and 8" long. The packages appeared to be vacuum sealed, wrapped in clear plastic wrap, with a strip of "Velcro" tape attached. Deputy Ellithorpe felt the packages and believed the contents to be a crystalline substance.

The officers removed the packages, and Dennison cut in to a package. The packages were wrapped in multiple layers of plastic wrap, vacuum packaging, carbon paper, and a layer of axle grease. A field test indicated that the contents contained methamphetamine.

Deputy Dennison then arrested the passenger, who was identified as defendant Reyes Rios Ruiz. Both Ruiz and Valdez were transported to the precinct station. Deputy Dennison seized the vehicle and had it sealed and towed to a storage yard. He obtained a search warrant to conduct a

further search of the vehicle, which was executed on May 12, 2005. In that search, an insurance card and Idaho vehicle registration in the name of one Jose Gonzales were found in the front of the vehicle, and two live rounds of ammunition and one spent casing were also found. No additional drugs or drug paraphernalia were found in the vehicle.

The two packages of crystalline substance were sent to the Washington State Patrol Crime lab where they were tested and weighed by Forensic Scientist Jason Dunn. One of the packages contained 449 grams of methamphetamine, the other 448 grams (1 lb. = 454 grams).

V. ARGUMENT

For over 20 years, State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986) has been the bright-line rule in the State of Washington. It expressly overruled State v. Ringer, 100 Wn.2d 686, 674 P.2d 1240 (1983) where the court had held that during a search incident to the arrest of a driver of a vehicle, the officer may search the person arrested and the area within his immediate control to remove any weapons the person might try to use to escape or resist arrest, and to avoid destruction of evidence of a crime. Ringer, 100 Wn.2d at 699-700. The court in Ringer had concluded that the searches of the vehicles could not be justified as searches incident to arrest because the drivers had been handcuffed and placed in the back of patrol cars prior to the searches. Id. at 700.

The rule in Stroud was specifically adopted to eliminate the need for a case-by-case assessment of when a warrantless search of an automobile incident to the arrest of the driver would be permissible, an approach deemed to be too burdensome for police officers in the field. Stroud, and later State v. Fladebo, 113 Wn.2d 388, 799 P.2d 707 (1989) acknowledge the greater privacy interest that this State's citizens have in their vehicles under Article I, § 7 of the State Constitution than under the Fourth Amendment of the United States Constitution, because locked containers within the vehicle are not subject to search. However, the bright-line rule that the rest of the passenger area may be searched incident to the arrest of the driver recognizes that "concerns for safety of officers and potential destructibility of evidence do outweigh privacy interests and warrant a bright-line rule permitting limited searches." State v. Patterson, 112 Wn.2d 731, 735, 774 P.2d 10 (1989).

In our case, the driver, Valdez, was arrested on a lawful warrant after his vehicle had been stopped and it was determined that he did not have a driver's license. Incident to a valid arrest (in our case, based on a warrant), law enforcement officers may conduct a warrantless search of the arrestee's person and the passenger compartment of the vehicle that he is in at the time of the arrest. State v. Johnson, 128 Wn.2d 431, 447, 909 P.2d 293 (1996).

In New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981) the United States Supreme Court held as a "bright-line" rule that when an arrestee is occupying the passenger compartment of a car at the time of arrest, he might grab a weapon or destroy evidence located anywhere within the entire compartment. Thus, the police may search the entire compartment incident to his arrest. State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986) followed the Belton decision, except as it related to locked containers. Stroud explained that the extent of the search of the passenger compartment of a suspect's vehicle deals with the areas that are within the suspect's immediate control at the time of or immediately prior to the suspect being arrested. (Stroud, supra at 152).

Division II in State v. Johnston, 107 Wn. App. 280, 28 P.3d 775 (2001), review denied, 145 Wn.2d 1021, 41 P.3d 483 (2002) gave examples of what was meant by some of the terminology used in Stroud and the cases that had followed it in our State. The central issue was whether or not the driver, or passenger, had "immediate control" of the compartment. (Johnston at 285-286). The Johnston case provided the following examples:

> Three cases, including Belton and Stroud, exemplify when an arrestee has ready access to a passenger compartment. In Belton, the arrestees were inside the passenger compartment when they were arrested. In Stroud, one of the arrestees was standing "in the swing of the open

> passenger door" and the other arrestee was "a couple of feet away." In State v. Bradley, 105 Wn. App. 30, 18 P.3d 602 (2001), the arrestee was leaning into his car as officers drove up. He walked away, leaving the driver's door "somewhat ajar." He was arrested 10-12 feet away and would not go down to the ground when told to do that. At the moment of arrest in all three cases, the arrestee had ready access to, and thus was in "immediate control" of, the passenger compartment of his vehicle.
>
> - Johnston at 286.

Stroud has consistently recognized the need for the bright-line rule. The case law that has followed Stroud has recognized the importance of this rule.

In State v. Johnson, 128 Wn.2d 431, 909 P.2d 293 (1996), the Supreme Court was asked to decide whether a sleeper compartment in the cab of a tractor-trailer was part of the passenger compartment subject to a search incident to the driver's arrest. The defendant in the Johnson case maintained that the sleeper was his temporary residence and as such was not subject to search incident to an arrest. The Supreme Court rejected that argument noting that the sleeper compartment was not really a home. They also were cognizant of the fact that the defendant was asking the court to retreat from Stroud and "return to the confusion of Ringer." State v. Johnson, 128 Wn.2d at 448.

The Supreme Court declined to follow that suggestion made by the defense. The Supreme Court quoted with approval the reasoning of the

Court of Appeals and indicated "when a home is located in a vehicle, in such a way to make it readily accessible from the passenger compartment, the safety of law enforcement officers and the need for a bright-line rule militate against prohibiting officers from searching a sleeping area which is readily accessible from the passenger compartment." State v. Johnson, 128 Wn.2d at 449.

The Supreme Court again looked at the concept of the "passenger compartment" when it reviewed the case of State v. Vrieling, 144 Wn.2d 489, 28 P.3d 762 (2001) where the contraband was found in the interior of a self-contained motor home. The Supreme Court noted, as it had in Johnson, that the back of the motor home was accessible to the driver and therefore the need for a bright-line rule militated against prohibiting the officers from searching the entire interior of the motor home. State v. Vrieling, 144 Wn.2d at 495.

Other examples from our State clearly demonstrate the need for the Stroud rule. State v. Boursaw, 94 Wn. App. 629, 976 P.2d 130 (1999) allowed the area beneath an ashtray (which had to be removed) to be searched as it was within the reach of the occupants of the automobile and within the passenger compartment area. State v. Chelly, 94 Wn. App. 254, 970 P.2d 376 (1999) held that the defendant had ready access into the passenger compartment of the vehicle where drugs and a firearm were

found hidden. In State v. Davis, 79 Wn. App. 355, 901 P.2d 1094 (1995), the defendant had ready access to an unlocked cooler which was located in the cargo area in the back of a van. In State v. Johnson, 65 Wn. App. 716, 829 P.2d 796 (1992), the defendant had ready access to a jacket, containing cocaine, which was located in the backseat of an automobile.

The Court of Appeals, in its decision of February 13, 2007, discusses the concept of the "passenger compartment." The State submits that the "passenger compartment" includes all space reachable without exiting the vehicle, and any unlocked containers therein. The search of the entire area to the rear of the front seats, including the area near the loose cup holder where the drugs were found, was therefore properly within the scope of the search of the defendant's vehicle incident to the warrant arrest of the driver.

As part of the Findings of Fact that were entered at the time of the 3.6 hearing, the court entered Findings of Fact Number 7 which sets forth the configuration of the interior of the vehicle and makes reference to two photo exhibits (Nos. 8 and 11). The Finding is as follows:

> 7. The configuration of seats in the vehicle is shown in the photos which are Exhibits Nos. 8 & 11. There is a space between the driver's and passenger's front seats which allows access to the rear passenger area of the minivan. Behind the two front seats there is a second row of three seats, and behind that a third row of two seats. Eiko alerted on a vent on the interior body panel

> of the driver's side, near the second row of seats. Deputy Ellithorpe removed Eiko from the vehicle and began to examine the panels in the area near the vent.

The next Findings of Fact (Number 8) discusses how he followed the secured panels (without removing them) back to where the cup holder was loose and under that was found the drugs.

As noted in State v. Johnson, 128 Wn.2d 431 (supra), the Federal Courts have broadly interpreted the "passenger compartment". For example, in United States v. Rojo-Alvarez, 944 F.2d 959, 970 (1st Cir. 1990), a passenger compartment included the hatch area of a hatchback automobile; in United States v. Veras, 51 F.3d 1365 (7th Cir. 1995), the passenger compartment included a secret compartment in the backseat area of the automobile; in United States v. Chapman, 954 F.2d 1352 (7th Cir. 1992), it was held that the rear area of a truck and a duffle bag in that area functioned as a passenger compartment of the vehicle. As noted in State v. Johnson, 128 Wn.2d at 453, Professor Lafave proposed the rule that a passenger compartment includes "all space reachable without exiting the vehicle, without regard to the likelihood in the particular case that such a reaching was possible." (3 Wayner Lafave, Search and Seizure, a Treaties on the 4th Amendment § 7.1(c), at 16-17 (2d Ed 1987)).

The State submits that the uncontested findings of fact in this case clearly establish that the drugs were found in the passenger compartment

of the van being driven by Mr. Valdez and in which Mr. Ruiz was a passenger. Once the felony warrant was discovered on Mr. Valdez, the search of the passenger compartment was incident to that arrest. Nor can a claim be made that the scene is secured simply by an officer's exercise of control over an arrestee. State v. Stroud, 106 Wn.2d at 152; State v. Boursaw, 94 Wn. App. at 634. In Boursaw, the dog search and the search behind the ashtray were not viewed as a second independent search but as a continuation of the original search. The entire delay was only about 10 minutes. (Boursaw, 94 Wn. App. at 635). In our situation the delay was approximately 8 minutes pursuant to the findings of fact entered by the trial court and at the most 20 minutes. In State v. Smith, 119 Wn.2d 675, 681, 835 P.2d 1025 (1992), a delay of 17 minutes before the search began was considered to be appropriate and within the scope of the search incident to arrest.

The court in its opinion, it appears to the State, has placed great significance on the fact that the driver and passenger were removed from the vehicle and the search was conducted at that point. The State submits that our Supreme Court made it quite clear in its bright-line holding in State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986) that:

> During the arrest process, including the time immediately subsequent to the suspect's being arrested, handcuffed, and placed in patrol car, officers should be allowed to search

> the passenger compartment of a vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked glove compartment, they may not unlock and search either container without obtaining a warrant. (State v. Stroud, 106 Wn.2d at 152).

The Court of Appeals in its opinion stated that the key issue was whether or not the officers exceeded the scope of a proper search incident to Valdez's arrest. However, there is nothing in the uncontested findings of fact that would support that this was anything other than a continuing, contemporaneous, and ongoing search incident to arrest

Under Stroud, the scope of a search of a vehicle incident to arrest of an occupant is defined by the entire passenger compartment and any unlocked containers within it, not by a subjective determination of whether the arrestee might actually have been able to reach the area in a given case.

Search incident to arrest is valid under the Fourth Amendment if:

1. The object searched was within the arrestee's control when he was arrested; and

2. If the events occurring after the arrest but before the search did not render the search unreasonable.

State v. Smith, 119 Wn.2d 675, 681, 835 P.2d 1025 (1992); United States v. Turner, 926 F.2d 883, 887 (9th Circuit 1991); United States v. Fleming, 677 F.2d 602, 607, (7th Circuit 1982).

The second aspect of this is that the events occurring at the time of the arrest but before the search did not render the search unreasonable. The question there is the amount of time and what was being done during the period between arrest and search.

This question of the timing of the search after arrest is very fact specific. The State submits that it largely depends on what's being done during that particular period of time.

Our case is similar to Boursaw, 94 Wn. App., supra where the police called a canine unit after they had already started the search and found drug paraphernalia. The court reasoned that the delay in the dog arriving at the scene was not unreasonable under the circumstances of that particular case.

> The State's reasoning is persuasive. We will not preclude police officers from requesting assistance to secure the scene and perform searches incident to arrest. A single officer arresting several intoxicated and unruly individuals must be allowed to request assistance to search the arrestees and a vehicle which they occupied. But this assistance is required to secure the scene. Boursaw argues that Oswalt had already secured the scene when the dog search and the search behind the ashtray were performed. This case turns, therefore, on what constitute activities related to "the securing of a suspect and the scene" and at what point is the scene sufficiently secured. Smith, 119 Wn.2d at 684.
>
> Considering that Stroud explicitly allows a search of an automobile incident to arrest after the suspect is handcuffed and in the patrol car, see Stroud, 106 Wn.2d at 152, one

> may conclude that the scene is not secured simply by an officer's exercise of control over the arrestee. Moreover, if we follow Boursaw's argument that the scene was secured in this case when Oswalt performed the initial search, we might preclude a second officer from immediately searching, as an added precaution, the same area already searched by her fellow officer.
>
> We find that because the delay was only ten minutes and Boursaw was at the scene, the dog search and the search behind the ashtray were not beyond the duration of a search incident to arrest. The dog search and the search behind the ashtray may be viewed not as a second independent search but as a continuation of Oswalt's search. Our holding is limited to the facts of this case, and delays caused by a request for assistance might be unreasonable under differing circumstances.
>
> - Boursaw at 634-635.

The State submits that the delay in our case was not unreasonable under the circumstances. Both defendants were still at the scene, the delay between initial discovery of some obvious tinkering with the interior of the car and the search was approximately 8 minutes. The use of the dog continued and aided the initial search.

The State further submits that both of the prongs have been met. The search was reasonable under the circumstances, justified and was contemporaneous with the lawful arrest.

The key question when applying Stroud is whether the arrestee had ready access to or immediate control over the passenger compartment at

the time of the arrest. State v. Johnston, 107 Wn. App. at 285; State v. Porter, 102 Wn. App. 327, 333, 6 P.3d 1245 (2000). This is often a highly fact specific question. But the court has made it quite clear that Stroud was attempting to find rules that would work in the practical world. In Stroud, the court emphasized the need for a definitive rule and observed that:

> A highly sophisticated set of rules . . . requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible of application by the officer in the field."

Stroud, at 151 quoted in State v. Johnson, 128 Wn.2d 431, 448, 909 P.2d 293 (1996).

The State submits that the Boursaw case continued the bright-line distinctions set forth in Stroud and was an attempt to fashion a decision that would work in the real world. This decision from Division II would undermine the bright-line rule set forth in Stroud and create major difficulties in implementing many of these concepts in the field. The Court of Appeals has totally gone behind the Findings of Fact and fashioned its own factual determinations (for example, constantly referring to the use of the police dog as a "second search"; referencing the placing of the driver in the squad car as evidencing a secured scene).

These are not consistent with the Findings of Fact that were entered at the trial court level and have not been taken exception to by any of the parties in this matter. The concept of a passenger compartment includes all space reachable without exiting the vehicle, and any unlocked containers therein. The search of the entire area to the rear of the front seats, including the area near the loose cup holder where the drugs were found, was therefore properly within the scope of the warrantless search of the defendant's vehicle incident to the felony arrest of the driver. This conclusion is consistent with the Findings of Fact entered by the trial court, and the bright-line reasoning in Stroud and the cases that have flowed from that decision.

Finally, the Court of Appeals indicated that because of the suppression of the evidence that the State would lack Corpus Delicti. The State submits that if this matter is reviewed by the Supreme Court and the trial court is reinstated, there is no Corpus Delicti issue dealing with either defendant and their confessions would properly be admissible. State v. Brockob, 159 Wn.2d 311, 150 P.3d 59 (2006).

VI. CONCLUSION

The State is requesting a reversal of the Court of Appeals decision and reinstituting of the finding of guilt of both of these defendants from the Superior Court level. Division II has undermined the case law that has

been followed for 20 years in our State and returns us to the pre-Stroud days of Ringer, uncertainty, and impracticality in the real world.

DATED this 23 day of April, 2007.

Respectfully submitted:

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APPENDIX "A"

COURT OF APPEALS, DIVISION II
PUBLISHED OPINION
NO. 33647-2-II
(consolidated with No. 33653-7-II)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent. vs. JESUS DAVID BUELNA VALDEZ, Appellant.	NO. 33647-2-II (consolidated with NO. 33653-7-II) PUBLISHED OPINION
STATE OF WASHINGTON, Respondent, v. REYES RIOS RUIZ, Appellant.	

Van Deren, J. -- In this consolidated case, Jesus David Buelna Valdez and Reyes Rio Ruiz challenge the search of their vehicle incident to Valdez's arrest on an outstanding felony warrant, arguing that the search exceeded the scope of a search incident to arrest under the Washington State Constitution, article 1, section 7. They argue that the trial court should have suppressed the evidence found in the vehicle during a search by a K-9 unit. We agree.

Ruiz also asserts that his statements alone are insufficient to convict him. We agree with Ruiz that the *corpus delicti* rule in Washington requires more than the accused's statements for conviction.

Accordingly, we reverse and remand with instructions to suppress the seized evidence.

FACTUAL BACKGROUND

On May 10, 2005, at approximately 7:45 PM, Detective Tom Dennison of the Clark County Sheriff's Department observed a Chevrolet Lumina minivan turning north onto N.E. 15th Avenue from an apartment complex parking lot in the Hazel Dell area of Clark County, Washington. Dennison stopped the vehicle because one of its headlights was not working. Valdez was driving and Ruiz was sitting in the front passenger seat. The vehicle stopped no more than 100 to 200 feet from a Vancouver School District school bus route stop.

Valdez presented his Washington State identification card in lieu of a driver's license. When Dennison conducted a records check, he discovered that Valdez had an outstanding felony warrant for his arrest. At 7:53 PM, Deputy Sean Boyle arrived to assist Dennison. Dennison arrested Valdez on the warrant, handcuffed him, and placed him in the back of the patrol car.

Dennison ordered Ruiz to step out of the vehicle and Boyle watched Ruiz while Dennison searched the interior of the vehicle. Dennison noticed that there were loose interior panels that appeared to have been tampered with. After hearing Valdez's statements and knowing that drugs are sometimes hidden behind plastic panels in vehicles and that panels are sometimes loose from being removed, the officers decided to call in Deputy Brian Ellithorpe and his certified narcotics detection dog. Ellithorpe and the dog arrived at 8:20 PM.

Ellithorpe directed the dog to search. The dog alerted to an interior vent in a driver's-side panel near the middle row of seats. Ellithorpe traced the vent to the third row of seats. There, he found a molded plastic cup holder. Ellithorpe popped the cup holder out and removed the underlying insulation. He found two packages containing a granular or crystalline substance under the insulation. Dennison then placed Ruiz under arrest. The result of a field test on the

packages was positive for methamphetamine. The Washington State Patrol Lab found that the crystalline substance in each package was methamphetamine hydrochloride.

PROCEDURAL FACTS

The prosecutor charged Valdez and Ruiz with one count of unlawful possession of a controlled substance -- methamphetamine hydrochloride -- with intent to deliver within 1,000 feet of a school bus stop. Valdez and Ruiz filed unsuccessful motions to suppress the seized methamphetamine. They waived a jury trial and were both found guilty in a bench trial of the charged crimes. They appeal.

ANALYSIS

I. SEARCH INCIDENT TO ARREST

Valdez and Ruiz argue that the trial court erred in failing to suppress the methamphetamine because the search resulting in its seizure was a constitutionally impermissible warrantless search incident to a driver's arrest. We review the reasonableness of a search or seizure de novo. *State v. Hoffman*, 116 Wn.2d 51, 97-98, 804 P.2d 577 (1991).

As our Supreme Court has stated:

> The [F]ourth [A]mendment to the United States Constitution provides that warrants may be issued only upon a showing of 'probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.' The Constitution requires that a detached and neutral magistrate or judge make the determination of probable cause.
>
> Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched.

State v. Maddox, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004) (citations omitted).

Absent an exception to the warrant requirement, a warrantless search is impermissible under both article 1, section 7 of the Washington Constitution and the Fourth Amendment to the

United States Constitution. *See State v. Johnson*, 128 Wn.2d 431, 446-47, 909 P.2d 293 (1996). Evidence seized during an illegal search may be suppressed under the exclusionary rule as "fruit of the poisonous tree." *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999). *See State v. O'Bremski*, 70 Wn.2d 425, 428, 423 P.2d 530 (1967).

A search incident to arrest is a well-recognized exception to the warrant requirement. *Chimel v. California*, 395 U.S. 752, 763, 89 S. Ct. 2034, 23 L. Ed.2d 658 (1969); *State v. Vrieling*, 144 Wn.2d 489, 492, 28 P.3d 762 (2001); *State v. Stroud*, 106 Wn.2d 144, 720 P.2d 436 (1986). But in Washington the exception to the warrant requirement is narrowly and jealously guarded. *Stroud*, 106 Wn.2d at 147. A valid search incident to arrest requires that a lawful arrest is made and that a search is conducted of the area within the immediate control of the individual arrested. *Chimel*, 395 U.S. at 763.

The United States Supreme Court has established a bright line rule that if a lawful arrest is made of an occupant in a vehicle, an officer may search the passenger compartment of the vehicle because the arrestee might grab a weapon or destroy evidence located within the compartment. *New York v. Belton*, 453 U.S. 454, 460, 101 S. Ct. 2860, 69 L. Ed.2d 768 (1981); *State v. Johnson*, 128 Wn.2d 431, 447, 909 P.2d 293 (1996). Our Supreme Court has drawn this exception more narrowly and has held that, incident to the driver's arrest, police may search any area of the interior of a vehicle that the driver may reach without leaving the vehicle. *Johnson*, 128 Wn.2d at 450-56.

> The ultimate teaching of our case law is that the police may not abuse their authority to conduct a warrantless search or seizure under a narrow exception to the warrant requirement when the reason for the search or seizure does not fall within the scope of the reason for the exception.

Ladson, 138 Wn.2d at 357.

Washington's exception focuses on officer safety and prevention of destruction of evidence. *Vrieling*, 144 Wn. 2d at 494. "[B]ecause of [Washington's] heightened privacy protection [under article 1, section 7] ... these exigencies [do not] always allow a search." *Stroud*, 106 Wn.2d. at 151. As our Supreme Court explained in *Stroud*:

> During the arrest process, including the time immediately subsequent to the suspect[] being arrested, handcuffed, and placed in a patrol car, officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked glove compartment, they may not unlock and search either container without obtaining a warrant. The rationale for this is twofold. First, by locking the container, the individual has shown that he or she reasonably expects the contents to remain private. Second[], the danger that the individual either could destroy or hide evidence located within the container or grab a weapon is minimized. The individual would have to spend time unlocking the container, during which time the officers have an opportunity to prevent the individual's access to the contents of the container.

Stroud, 106 Wn.2d at 152 (citations omitted).

In addition to determining whether a search incident to arrest was properly limited to the area within the arrestee's immediate control, *United States v. Vasey*, 834 F.2d 782, 786-87 (9th Cir. 1987), we must consider whether the search "was roughly contemporaneous with the arrest." *United States v. Tank*, 200 F.3d 627, 631 (9th Cir. 2000) (citations omitted). A contemporaneous warrantless search may be conducted shortly after the arrestee has been removed from the area. *United States v. McLaughlin*, 170 F.3d 889, 893 (9th Cir. 1999). The arrest and search should not be separated in time or by intervening acts. *McLaughlin*, 170 F.3d at 893. The actions following the arrest must be one continuous series of events closely connected in time. *McLaughlin*, 170 F.3d at 893. "At some point, a significant delay between the arrest and the search renders the search unreasonable because it is no longer contemporaneous with the arrest." *State v Smith*, 119 Wn.2d 675, 683, 835 P.2d 1025 (1992).

Assuming, without deciding, that the searched area here was accessible from the passenger area without the vehicle occupants needing to leave the vehicle, even though they were both seated in the front seats of the three rows of seats, and, further, assuming that the search was timely, we address the key issue of whether the officers exceeded the scope of a proper search incident to Valdez's arrest when they called for a drug-sniffing dog when (1) two officers were already on the scene; (2) both the driver and the passenger had been removed from the vehicle; and (3) the initial search of the vehicle was complete and did not reveal evidence of weapons or drugs. The State relies on *State v. Boursaw*, 94 Wn. App. 629, 976 P.2d 130 (1999), as blanket authority allowing officers to call for a K-9 search after a driver's arrest and removal from the vehicle and following the initial vehicle search.

In *Boursaw*, the defendant was stopped for a traffic infraction and was arrested because he was driving with a suspended license. 94 Wn. App. at 630-31. The arresting officer handcuffed the defendant and placed him in the back of the patrol car. *Boursaw*, 94 Wn. App. at 631. When the officer searched the defendant's car incident to his arrest he "found plastic ziplock bags and several needles" in an unlocked glove box. *Boursaw*, 94 Wn. App. at 631. The officer then called for a K-9 unit that arrived at the scene within 10 minutes. *Boursaw*, 94 Wn. App. at 631. The dog alerted to an area under the front ashtray. *Boursaw*, 94 Wn. App. at 631. The officer removed the ashtray and discovered a plastic bag containing a substance that tested positive for methamphetamine. *Boursaw*, 94 Wn. App. at 631. Division One of this court upheld the search, holding that the delay was reasonable and "the area behind the ashtray is within the reach of the occupants of the automobile." *Boursaw,* 94 Wn. App. at 636. But *Boursaw* turned "on what constitutes activities related to 'the securing of the suspect and the scene,' and at what point is the scene sufficiently secured." 94 Wn. App. at 634 (citation

omitted). Moreover, Division One limited *Boursaw* "to the facts of this case." 94 Wn. App. at 635. And the original search of the vehicle in *Boursaw* revealed evidence of illegal drug possession. *Boursaw*, 94 Wn. App. at 631.

"Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched." *Maddox*, 152 Wn.2d at 505. In *Boursaw* the officers had, in addition to a brief interlude between the arresting officer finding drug paraphernalia and the K-9 search of the front passenger area, probable cause that evidence of illegal activity could be found in the vehicle.

Here, the State argues that the K-9 search was justified because (1) the driver had been arrested; (2) "the dashboard was missing screws and plastic fasteners, and that it had appeared to be tampered with," Report of Proceedings (RP) at 18; and (3) Valdez inconsistently told the officer that he had just come from Fourth Plain[1] and from Las Vegas.[2] In addition, the officer knew that a headlight was out on the minivan.

But before Dennison called for a K-9 unit he had placed Valdez in the patrol car; there was another officer on the scene; and he had completed his search of the passenger compartment of the vehicle for weapons or destructible evidence. Unlike the officer in *Boursaw*, he found no weapons, destructible evidence, or evidence of drugs or illegal activity other than loose plastic paneling under the dash. At that point, concerns about officer safety and destruction of evidence

[1] We take judicial notice that Fourth Plain is a street in Vancouver, Washington.

[2] The appellants began their trip in Las Vegas.

did not provide on-going exigent circumstances allowing another warrantless search. *Vrieling*, 144 Wn.2d at 494; *See Stroud*, 106 Wn.2d at 152.

Furthermore, it was not until the drug dog alerted while searching the vehicle that probable cause existed to search for the presence of a controlled substance. "Generally, an 'alert' by a trained dog is sufficient to establish probable cause for the presence of a controlled substance." *State v. Jackson*, 82 Wn. App. 594, 606, 918 P.2d 945 (1996), *review denied*, 131 Wn.2d 1006, 932 P.2d 644 (1997). But here, the drug dog alerted during a second search following Dennison's initial search after both the driver and passenger were removed from the vehicle; the scene had been secured by two officers; and the initial search only revealed missing screws and loose front seat-area paneling.

The officers could have applied for a warrant to conduct a second search of the vehicle based on the facts the State relies on to justify the K-9 search after Valdez's arrest and the impoundment of the vehicle. *See State v. Simpson*, 95 Wn.2d 170, 189, 622 P.2d 1199 (1980) (holding that a motor vehicle may be impounded if there is probable cause to believe that it was used in the commission of a felony). But the record before us does not show probable cause sufficient to warrant a second search for drugs based on the presence of loose paneling and screws and a perceived inconsistent statement about the origin of Valdez and Ruiz's travels. Without the K-9 unit's alert, the officers would not have removed the cup holder and insulation, revealing the presence of drugs. Although it turned out that the officer's suspicion was justified, it was not proper under these circumstances to commence an independent second search, focused solely on the presence of illegal substances, by calling in a K-9 unit without some evidence of the presence of drugs.

The dissent would remove Washington's greater protection of an individual's right to be free of warrantless searches and adopt the United States Supreme Court's broad investiture of police power to thoroughly search a vehicle without evidence of a crime following the driver's arrest. *See Stroud,* 106 Wn.2d at 147; *Belton*, 453 U. S. at 460. The dissent's focus ignores the legal basis of allowing warrantless searches of *unlocked* items in a vehicle, i.e., the destruction of evidence, and officer safety. The dissent argues that even if there is no concern on either issue -- when the driver is handcuffed and in a patrol car, there is another officer on the scene, and there is loose paneling and no other evidence of a crime being committed -- the police may rely on their experience that some drug couriers put drugs behind car paneling in order to justify a K-9 unit search of the vehicle. This erosion of protections afforded by our Washington Constitution against warrantless searches is not dictated by *Smith* or *Boursaw* and we refuse to abandon those protections in favor of the federal rule.[3]

II. *CORPUS DELICTI*

Ruiz argues that if the methamphetamine is suppressed, the only evidence that he possessed the methamphetamine with the intent to distribute was his confession. We agree that under Washington's *corpus delicti* rule, Ruiz's confession, standing alone, was insufficient evidence for conviction.

"Washington's version of the *corpus delicti* rule requires that the State produce evidence, *independent of the accused's statements*, sufficient to support a finding that the charged crime was committed by someone." *State v. Bernal*, 109 Wn. App. 150, 152, 33 P.3d 1106 (2001),

[3] Ruiz contends that the use of the K-9 unit was overly intrusive. Because we find that the search was an impermissible second warrantless search, it is unnecessary to address this issue or other issues Ruiz raises, other than to briefly address Ruiz's assertion that absent the illegally seized evidence, his statements cannot be used to support his conviction.

review denied, 146 Wn.2d 1010, 52 P.3d 519 (2002) (first emphasis added). "A confession or admission, standing alone, is insufficient to establish the *corpus delicti* of a crime." *State v. Minivangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995) (emphasis added).

We reverse and remand with instructions to suppress the seized evidence.

Van Deren, J.

I concur:

Houghton, C.J.

Hunt, J. — I concur in the majority's reversal of passenger Ruiz's conviction based on their holding that (1) there were no legitimate grounds to search Ruiz, (2) the independent source rule does not apply to the circumstances surrounding Ruiz, and (3) therefore, the trial court should have suppressed the evidence found inside the van with respect to the State's prosecution of Ruiz. But I respectfully dissent from the majority's holding that the police officers' use of a K-9 dog to sniff inside the passenger compartment of Valdez's van was not part of a valid search incident to his arrest and was, therefore, inadmissible against him. I would affirm Valdez's conviction.

I. STANDARD OF REVIEW

We review a trial court's denial of a motion to suppress by determining (1) whether substantial evidence exists to support the trial court's findings, and (2) in turn, whether those findings support the trial court's conclusions of law. *State v. Jacobs*, 121 Wn. App. 669, 676, 89 P.3d 232 (2004), *rev'd on other grounds*, 154 Wn.2d 596 (2005). We may affirm on any ground that the record and briefs adequately support. *Keever & Assocs. v. Randall*, 129 Wn. App. 733, 740, 119 P.3d 926 (2005), *review denied*, 157 Wn.2d 1009 (2006).

I would affirm the trial court here on the ground that calling the K-9 dog to sniff the passenger compartment, after the officers discovered suspicious loose panels, which they recognized as a sign of possibly hidden illegal drugs, was within the legitimate scope of the officers' search of Valdez incident to his arrest on an outstanding warrant.

II. SEARCH INCIDENT TO ARREST

The majority acknowledges that (1) a search incident to arrest is a well-recognized exception to the warrant requirement, *Chimel v. California*, 395 U.S. 752, 763, 89 S. Ct. 2034, 23 L. Ed. 658 (1969); *State v. Vrieling*, 144 Wn.2d 489, 492, 28 P.3d 762 (2001); (2) a search

incident to arrest of an automobile driver extends to the vehicle's entire passenger compartment. *State v. Johnson*, 128 Wn.2d 431, 455, 909 P.2d 293 (1996) (a truck's sleeping area is part of the passenger compartment because it is reachable without exiting the vehicle); and (3) the officers here acted lawfully in searching the inside of Valdez's van incident to his arrest on an outstanding warrant.

I disagree with the majority's conclusion, however, that the officers' use of a drug-sniffing dog (1) "exceeded the scope of a proper search incident to Valdez's arrest," Majority at 6; and (2) therefore, was "an impermissible second warrantless search," Majority at 9 n.3, which required the officers to obtain a warrant, presumably based on additional probable cause. Washington case law does not impose such a requirement and, in my view, it would be improvident for us to create one here.[4] Instead, I would hold that a trained dog sniff during an otherwise valid search incident to arrest does not exceed the scope of the search incident to arrest.

A. Dog Sniff Within Scope of Lawful Search Incident to Arrest

The majority relies on their characterization of the K-9 search as a "secondary" search, distinct from the officers' "primary" or "initial" search of Valdez incident to his arrest. In my view, the case law not only fails to support this "primary-secondary" distinction under the facts presented here, but also holds to the contrary. *See, e.g. State v Smith*, 119 Wn.2d 675, 684, 835

[4] The majority's "primary-secondary search" dichotomy might require additional probable cause for the officers to resume their lawful search incident to arrest every time an officer steps away from a vehicle after a preliminary inspection, perhaps to question the driver or a witness or to do a records check on his patrol computer. Such result would be in direct conflict with our Supreme Court's rule in *State v. Smith*, 119 Wn.2d 675, 684, 835 P.2d 1025 (1992).

P.2d 1025 (1992) (no independent probable cause required to search fanny pack because search was contemporaneous with the arrest.).

Here, the officers conducted a continuous search incident to Valdez's arrest on an outstanding warrant. Because Valdez was driving a vehicle, they first briefly patted him down and cursorily checked his van for weapons and immediately obvious destructible evidence. After they secured him, they continued their legitimate search incident to his arrest with a more thorough check of the interior of his van. That the officers paused during the course of that search to call for the K-9 unit did not end their continuing, lawful search incident to Valdez's arrest, especially where the officers had not yet completed their search of his van incident to his arrest.

Except for locked containers, *Johnson* allows a search of the entire interior of the driver's vehicle incident to arrest. In my view, for purposes of a search of a vehicle's interior incident to a driver's arrest under *State v. Stroud*,[5] there is little qualitative difference among unlocked containers, loose panels, and removable cup holders inside a vehicle. *See Johnson*, 128 Wn 2d at 449.[6] Acting within this lawful scope of a search of Valdez's van's interior incident to his arrest,

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[5] 106 Wn.2d 144, 720 P.2d 436 (1986).

[6] *Johnson*, 128 Wn.2d at 449-52:

> [I]n *State v. Fladebo*, [113 Wn.2d 388, 779 P.2d 707 (1989)] we extended the *Stroud* rule, holding that all unlocked containers found inside the passenger compartment of a vehicle could be searched during, or soon after, custodial arrest of its occupant. In that case we concluded that the defendant's purse, found in the passenger compartment, was an unlocked container and thus subject to search.
>
> . . . . .
>
> > [W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the *passenger compartment* of that automobile.

the officers could have removed the loose panels and the non-fixed cup holder, and they could have searched any other non-secured or unlocked area within the van's interior. *See also State v. Stroud*, 106 Wn.2d 144, 150, 720 P.2d 436 (1986).[7]

The officers here expedited their lawful search of the interior of Valdez's van and its unlocked contents with the aid of a K-9 sniffer dog, who helped them focus more quickly on the spots most likely to conceal illegal drugs, thus, reducing the need to remove unnecessarily other loose panels, cup holders, and other similarly "unlocked containers" within the van's exterior that did not conceal illegal drugs. This use of the K-9 dog to expedite the search of the van's

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> *It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach. Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have.*

(Footnotes omitted.)

[7] Our Supreme Court's dictum in *Stroud* focuses on a defendant's privacy interest in containers in his vehicle:

> In recent cases, the United States Supreme Court has enlarged the narrow exceptions to the prohibition in the Fourth Amendment against warrantless searches. The effect has been to make lawful a warrantless search of a passenger compartment of a car, and all containers (luggage, paper bags, etc.) inside it, pursuant to a lawful custodial arrest. *New York v. Belton*, 453 U.S. 454, 69 L. Ed. 2d 768, 101 S. Ct. 2860 (1981). The Supreme Court has also held that, if the officers have probable cause to believe that the trunk contains contraband, they may also search any containers inside the trunk for this contraband. *United States v. Ross*, 456 U.S. 798, 72 L. Ed. 2d 572, 102 S. Ct. 2157 (1982).
>
> These exceptions to the Fourth Amendment were part of narrowly and jealously drawn exemptions to the warrant requirement. The rationale for these decisions was that the exigencies of the situation surrounding a car search pursuant to a custodial arrest outweighed *whatever privacy interests the driver and passengers had in the articles and containers in the car.* Belton, [453 U.S.] at 461.

interior was a continuation of the ongoing lawful search incident to Valdez's arrest. Use of the dog-sniff was not, therefore, a "second search," as the majority characterizes it (Majority at 9). Consequently, the dog sniff did not require a second warrant and it did not violate Washington State Constitution, article 1, section 7. *Johnson*, 128 Wn.2d at 451-52; *State v. Boursaw*, 94 Wn. App. 629, 634-35, 976 P.2d 130 (1999) (officers may conduct a K-9 search incident to a driver's arrest even after the driver's removal from the vehicle). *See also Illinois v. Caballes*, 543 U.S. 405, 409, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005) (a trained dog sniff during a valid traffic stop does not compromise a legitimate privacy interest).

B. Reasonable Suspicion

The majority attempts to distinguish Division I's *Boursaw* opinion by asserting that the arresting officers here initially found no *explicit* evidence of drugs. I respectfully disagree with this distinction.

The plastic ziplock bags and needles that the officers found in *Boursaw* were not qualitatively different, as unequivocal evidence of drug use, from the loose panels in Valdez's van. As here, it was the *Boursaw* officers' narcotics arrest experience that led them to associate needles and plastic bags with illegal drug activity, in which, as a result, they reasonably suspected Boursaw was involved. Similarly, here, the officers' observation that Valdez's van's paneling had been tampered with, similarly arguably innocuous but for the officers' narcotics experience, led them to suspect correctly that drugs might be hidden behind the loose interior paneling.

That such suspicion was reasonable is amply supported by case law. *See, e.g., United States v. Ross*, 456 U.S. 798, 820, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982) (An experienced law

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Stroud, 106 Wn.2d at 147 (emphasis added).

enforcement officer would know that drug couriers do not often leave their contraband "strewn across the trunk or floor of a car," and that they frequently hide drugs . . . inside the cavities in a car's panels); *United States v. Mendez*, 118 F.3d 1426, 1432 (10th Cir. 1997) (legitimate officer suspicion after observing a crooked dashboard faceplate and dismounted radio); *United States v. Pena*, 920 F.2d 1509, 1512 (10th Cir. 1990) ("loose, crooked and missing screws on the interior molding" led officer to discover cocaine in the quarter panel), *cert. denied*, 501 U.S. 1207 (1991). In my view, any differences among the officers' suspicion here and the officers' suspicions in *Boursaw*, *Ross*, and the two federal circuit court cases is immaterial to the reasonableness of the officers' respective suspicions -- all five situations, including this one, involved officers relying on their experience to recognize indicia of possible unlawful drug activity.

Finding *Boursaw's* rationale consistent with our state constitutional principles as set forth in *Smith* and with federal constitutional rules set forth in *Belton* and its progeny, I would adopt *Boursaw* here, uphold the trial court's denial of Valdez's motion to suppress based on this alternate ground, and affirm his conviction.

Hunt, J.

APPENDIX "B"

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON
CrR 3.5/3.6 Hearing

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FILED
JUL 19 2005
JoAnne McBride, Clerk, Clark Co

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v. REYES RIOS RUIZ, Defendant.	No. 05-1-01065-7 FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CrR 3.5/3.6 Hearing

THIS MATTER having come duly and regularly before the Court on the 15th day of July, 2005 for hearing pursuant to CrR 3.5, and CrR 3.6 on Defendant's Motion to Suppress, Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, State of Washington, Defendant appearing in person and with his attorney Jason C. Bailes, and the parties having stipulated to the admission into evidence of a copy of the police investigation reports in Clark County Sheriff's Case No. S05-06664 and to the Court's consideration of said reports, and the Court having reviewed said reports and having heard and considered the testimony of witnesses, and other evidence presented, and the statements and

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arguments of counsel, makes the following:

FINDINGS OF FACT

1. On May 10, 2005 at approximately 7:45 p.m. Clark County Sheriff's Detective Tom Dennison, while on duty, observed a Chevrolet Lumina minivan leaving the parking lot of an apartment complex and heading north on NE 15th Avenue in Hazel Dell, in Clark County, Washington. As the vehicle passed him, Detective Dennison noticed that the driver's side headlight on the vehicle was not working. Detective Dennison stopped the vehicle in the parking lot of an apartment complex at 9211 NE 15th Avenue. The vehicle had an Idaho license plate.

2. The vehicle was occupied by two male subjects. Defendant Reyes Rios Ruiz was seated in the front passenger seat. Detective Dennison contacted the driver of the minivan, who presented a Washington State Identification card which identified him as Jesus David Buelna Valdez. Detective Dennison asked Valdez if he had a driver's license. Valdez stated that he did not. Detective Dennison explained why he had stopped the vehicle and asked where Valdez was coming from. Valdez replied "Fourth Plain". Detective Dennison asked for a specific address on Fourth Plain but Valdez provided only a general area, not a specific address. Since Detective Dennison had just observed the vehicle leaving an apartment complex a short distance away, he asked again where Valdez was coming from. Valdez replied "Las Vegas".

3. Detective Dennison returned to his patrol car and conducted a records check through dispatch using the information on Valdez's ID card. He was notified by the

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dispatcher that there was an outstanding felony warrant for a person by the same name. The dispatcher relayed to Detective Dennison a Social Security number and a description of several tattoos for the person wanted on the warrant.

4. Deputy Sean Boyle arrived to assist at approximately 7:53 p.m. At that time, Valdez was still seated in the driver's seat and Defendant Ruiz was still seated in the front passenger seat. After Detective Dennison confirmed that Valdez had tattoos matching those described on the warrant, he arrested Valdez, handcuffed him and placed him in the rear of his patrol car. Detective Dennison informed Valdez that he would be searching the van. Detective Dennison then asked the passenger, Defendant Ruiz, to get out of the minivan.

5. Detective Dennison and Deputy Boyle began to search the interior passenger compartment of the minivan. They noticed that panels under the dashboard were loose, and appeared to have been tampered with. Detective Dennison was aware that drugs are sometimes hidden behind plastic panels in vehicles, and that panels are sometimes loose from having been removed. Based upon the loose panels and Valdez's evasive statements about where he was coming from, Detective Dennison called for a narcotics detection dog to assist in the search. Deputy Brian Ellithorpe and his dog Eiko were dispatched at 8:12 p.m., and arrived at the location of the stop at 8:20 p.m. When Deputy Ellithorpe arrived he observed a subject in custody in a patrol car, and a second subject standing a short distance away from the minivan.

6. Eiko is a Washington certified narcotics detection dog. Deputy Ellithorpe first assessed the vehicle himself, and noted not only that the dash and panels under it were

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loose, but that there were also loose panels in the front doors of the vehicle, and screws and fasteners appeared to have been removed. Deputy Ellithorpe first took Eiko on a sweep around the exterior of the vehicle, and then put Eiko inside the vehicle.

7. The configuration of seats in the vehicle is shown in the photos which are Exhibits Nos. 5 1 1. There is a space between the driver's and passenger's front seats which allows access to the rear passenger area of the minivan. Behind the two front seats there is a second row of three seats, and behind that a third row of two seats. Eiko alerted on a vent on the interior body panel on the driver's side, near the second row of seats. Deputy Ellithorpe removed Eiko from the vehicle and began to examine the panels in the area near the vent.

8. The panels immediately around the vent were secure. Deputy Ellithorpe moved toward the rear and located a molded plastic cup holder which was loose. The cup holder was in a small section of panel over the rear wheel near the third row of seats. The cup holder was not fastened or secured. Deputy Ellithorpe lifted the cup holder and observed a piece of insulation underneath. The insulation was loose or unsecured, and was in a location where insulation would not normally be installed. It appeared to have been laid loosely in the opening. Deputy Ellithorpe lifted the piece of insulation and observed two packages wrapped in plastic wrap, laying in the space under the panel. Each of the packages was approximately 8 inches long, 3 inches thick, and 4 inches wide and appeared to be vacuum sealed bags wrapped in plastic wrap. Deputy Ellithorpe noted that the contents of the packages felt like a granular or crystalline substance.

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9. Deputy Ellithorpe removed the two packages and notified Detective Dennison and Deputy Boyle. Detective Dennison arrested the passenger, Defendant Reyes Rios Ruiz. Detective Dennison cut into one of the packages, and conducted a field test on the contents. The result was a positive indication for methamphetamine.

10. Detective Shane Gardner is assigned to the Clark Skamania Drug Task Force. He speaks fluent Spanish. He was summoned to the Precinct station to interview Defendants Valdez and Ruiz. Detective Gardner first contacted Valdez. After speaking with Valdez Detective Gardner spoke separately with Defendant Ruiz. Detective Dennison was also present. Detective Gardner introduced himself and asked Defendant Ruiz if he spoke English. Defendant shook his head in a negative response. Detective Gardner asked Ruiz if he spoke Spanish and Ruiz replied in the affirmative.

11. Detective Gardner read the Miranda warnings in Spanish to Defendant Ruiz from a pre-printed card, pausing after each of the enumerated rights paragraphs on the card to ask Defendant if he understood. After each of the rights, Defendant Ruiz stated aloud that he understood. At the conclusion of the rights, Detective Gardner asked Defendant, still in Spanish, if, having in mind the rights which had been read, he would be willing to answer questions. Defendant Ruiz stated that he was willing to speak with the officers.

12. The Miranda rights which Detective Gardner read to Defendant Ruiz were in proper form and complied with the requirements of Miranda v. Arizona and subsequent cases.

13. Detective Gardner then questioned Defendant Ruiz about where he had been,

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where he was going, and the methamphetamine found in the van and how it came to be there. Although there were two or three questions to which Defendant Ruiz did not respond, throughout the interview he answered most questions freely. He did not request an attorney, refuse to answer questions or otherwise invoke his rights to remain silent or have counsel. Defendant did not appear impaired by the influence of any drugs or alcohol. His responses were coherent and demonstrated that he was in full possession of his normal mental faculties and communications skills and fully understood the rights which had been read to him.

14. No threats or promises were made to Defendant to induce him to answer questions or waive his rights.

DISPUTED FACTS

There are no disputed facts.

Based upon the foregoing Findings of Fact, the Court enters the following:

CONCLUSIONS OF LAW

A. CrR 3.6 Motion to Suppress:

1. The Court has jurisdiction of the Defendant and the subject matter.

2. Detective Dennison's stop of the vehicle for a defective headlight infraction was a valid traffic stop.

3. Detective Dennison was justified in further detaining the driver, Valdez and conducting a records check using the information on Valdez's identification card, based upon the fact that Valdez, who was driving the vehicle, did not present a license and indicated that he did not have a license.

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4. Detective Dennison lawfully arrested Valdez after being notified that there was a warrant for his arrest, and verifying his identity as the wanted person.

5. Pursuant to State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986), State v. Vrieling, 144 Wn.2d 489, 28 P.3d 762, (2001), and State v. Johnson, 128 Wn. 2d 431, 909 P.2d 293 (1996), Detective Dennison as assisted by Deputy Ellithorpe was lawfully permitted to conduct a warrantless search of the passenger compartment of the vehicle driven by Valdez, as a search incident to Valdez's arrest.

6. The passenger compartment includes all space reachable without exiting the vehicle, and any unlocked containers therein. The search of the entire area to the rear of the front seats, including the area near the loose cup holder, was therefore properly within the scope of the warrantless search of the Defendant's vehicle incident to the arrest of the driver, Valdez.

7. Because the cup holder was unsecured and could be lifted easily and without force to expose the space underneath without breaking or removing any screw, lock or fastener, the space under the cup holder was the equivalent of an unlocked glove box, console or other unlocked space within the passenger compartment and was thus also within the scope of the search of the vehicle incident to the driver's arrest. State v. Boursaw, 94 Wn.App. 629, 635, 976 P.2d 130, (1999) State v. Vrieling, supra; State v. Johnson, supra.

8. Detective Dennison was entitled to obtain the assistance of Deputy Boyle and Deputy Ellithorpe and narcotics dog Eiko in conducting the search of the vehicle incident to the arrest. State v. Boursaw, supra.

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9. The methamphetamine was therefore seized as the product of a lawful warrantless search of the vehicle incident to the arrest of the driver, Valdez, and the Motion to Suppress should therefore be denied.

10. Upon discovery of the methamphetamine packages, there was probable cause to arrest Defendant Ruiz, the passenger, for possession of the drugs.

B. CrR 3.5 Hearing:

10. Defendant was lawfully arrested and was in custody at the time Detective Gardner contacted him at the Precinct station on May 10, 2005. The statements made to Detective Gardner were therefore the product of custodial interrogation.

11. Prior to any custodial interrogation Defendant was informed of his Miranda rights by Detective Gardner, who read them from a preprinted card. The form of the rights given to Defendant Valdez was proper and complied with the requirements of Miranda v. Arizona and subsequent case law.

12. After being advised of those rights, Defendant knowingly, intelligently and voluntarily waived those rights and the statements made to Detective Gardner are the

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product of that waiver and are therefore admissible as evidence at trial in the above cause.

DONE in open Court this 19 day of July, 2005.

JOHN F. NICHOLS
JUDGE OF THE SUPERIOR COURT

Presented by:

Philip A. Meyers, WSBA #8246
Deputy Prosecuting Attorney

Copy received, approved for entry
this 19 day of July, 2005.

Jason C. Bailes, WSBA#31112
Attorney for Defendant

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APPENDIX "C"

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON NON-JURY TRIAL

7

FILED
JUL 1 0 2005
JoAnne M... Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v. REYES RIOS RUIZ, Defendant.	No. 05-1-01065-7 FINDINGS OF FACT AND CONCLUSIONS OF LAW ON NON-JURY TRIAL

THIS MATTER having come duly and regularly before the Court on the 18th day of July, 2005 for trial, Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, State of Washington, Defendant appearing in person and with his attorney Jason C. Bailes, Defendant having previously entered a knowing, intelligent and voluntary written waiver of his right to trial by a jury, and a knowing, intelligent and voluntary waiver of his right to hear and confront witnesses against him and of his right to call witnesses on his own behalf and to compel their attendance, and the Defendant and the Plaintiff further having stipulated and agreed to the admission into evidence of a copy of police investigation reports, including copies of evidence and photos, prepared by the investigating officers of the Clark

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County Sheriff's Department in Case No. S05-06664, to the Crime Laboratory report number 505-001061 dated 7/14/05, the Stipulation of Facts, and to the Clark County Assessment and GIS aerial photo, and the parties further having stipulated to the incorporation into evidence at trial of the testimony of the witnesses and evidence at the hearing on Motion to Suppress and CrR 3.5 Hearing held herein on July 15, 2005, and the parties having stipulated to the Court's entry of Findings of Fact and Conclusions of Law based upon said stipulations and evidence, and the Court, having heard and considered the testimony of said witnesses, police reports and exhibits entered into evidence, and the statements and arguments of counsel, now finds the following facts to have been proven beyond a reasonable doubt:

FINDINGS OF FACT

1. On May 10, 2005 at approximately 7:45 p.m. Detective Tom Dennison of the Clark County Sheriff's Department observed a Chevrolet Lumina minivan turning north onto NE 15th Avenue from an apartment complex parking lot in the Hazel Dell area of Clark County, Washington. He observed that one of the vehicle's headlights was not working. Detective Dennison stopped the vehicle. The driver was Defendant Jesus David Buelna Valdez. The only other occupant of the vehicle was Defendant Reyes Rios Ruiz, who was sitting in the front passenger seat.

2. Detective Dennison contacted Defendant Valdez, who presented his Washington State Identification card. Defendant Valdez stated he did not have a driver's license. Detective Dennison conducted a records check and learned that there was an

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outstanding warrant for Defendant Valdez. Detective Dennison arrested Defendant Valdez, handcuffed him and placed him in the back of the patrol car.

3. Deputy Sean Boyle arrived to assist Dennison. Dennison told Defendant Ruiz to step out of the vehicle. Detective Dennison and Deputy Boyle began to search the vehicle incident to the arrest of Defendant Valdez.

4. Detective Dennison noticed that there were loose panels under the dash in the vehicle which appeared to have been tampered with. Detective Dennison summoned the assistance of Deputy Ellithorpe and his K-9 Eiko. Eiko is certified under the Washington Administrative Code as a trained narcotics detection dog.

5. Deputy Ellithorpe also examined the vehicle and saw that there were loose panels under the dash and that the dash panel itself appeared to be out of place. He also noted that there were also loose panels in the front doors from which screws and fasteners had been removed. Deputy Ellithorpe directed K-9 Eiko in a search of the vehicle. Eiko alerted on a vent in the side panel inside rear passenger area of the vehicle on the driver's side. Deputy Ellithorpe searched the area where Eiko had traced it back to the beginning of the 3rd row and alerted, and found a molded plastic cup holder which had been unfastened and which was sitting loosely in place. Deputy Ellithorpe lifted the cup holder and found a piece of insulation underneath. The insulation had also been unsecured from its original location and was sitting loosely in the opening. Deputy Ellithorpe lifted the piece of insulation and found two packages wrapped in plastic wrap. Each package was approximately 8 inches long, 4 inches wide and 3 inches thick.

6. Deputy Ellithorpe removed the packages and notified Detective Dennison and

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Deputy Boyle. Defendant Reyes Rios Ruiz was then placed under arrest. Detective Dennison cut open one of the packages and found that it contained a crystalline substance which appeared to be methamphetamine. The methamphetamine in the packages was wrapped in multiple layers of plastic wrap, with layers of axle grease, carbon paper, and vacuum sealed plastic in between the layers of plastic wrap.

7. Both Defendants were transported to the Clark County Sheriff's West Precinct station. Detective Shane Gardner was summoned to the Precinct station to interview Defendants Valdez and Ruiz. Detective Gardner is assigned to the Clark Skamania Drug Task Force and speaks fluent Spanish. He first contacted Defendant Valdez and then spoke with Defendant Ruiz. Detective Gardner asked Ruiz if he spoke English and Defendant shook his head in the negative. Detective Gardner asked Ruiz in Spanish if he spoke Spanish, Defendant Ruiz replied that he did. Detective Gardner then read Defendant Ruiz his Miranda rights and warnings in Spanish.

8. After being advised of his Miranda rights, Defendant Ruiz agreed to answer questions. He told Detective Gardner that he grew up on Mexico, and had been in the United States approximately nine months. He stated that he had recently moved to Las Vegas and currently lived there. He stated he did not know his street address in Las Vegas. Defendant Ruiz said he had known "Jesus" referring to Defendant Valdez, for about two months. He first said that he had met Valdez in Las Vegas, but then said that he had met Valdez in Phoenix, where Ruiz had lived previously. Defendant Ruiz said he had no friends or family in Vancouver, and the only person he knew in Vancouver was Valdez, whom he knew had family and friends in Vancouver. When asked why he

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had come on the trip to Vancouver, he stated that he came along to keep Valdez company. Detective Gardner asked Defendant Ruiz if he knew why he had been arrested. Ruiz replied that 1 to 2 pounds of methamphetamine had been found in their van. In response to further questions, Defendant Ruiz stated that the methamphetamine was both his and Valdez's, and that they had gotten it in Las Vegas. When asked who they had obtained it from Ruiz stated that he did not know the name of the person. Detective Gardner asked Defendant Ruiz why they had brought the 2 pounds of methamphetamine to Vancouver. Defendant Ruiz said that he thought it would be easy to sell in Vancouver. He said he did not know how much they were going to sell it for. Detective Gardner again asked Defendant Ruiz why he had come along on the trip, and specifically if it was to help protect the load of drugs. Defendant Ruiz replied that it was for that purpose.

9. Detective Dennison placed the packages of methamphetamine into the evidence system. The packages were sent to the Washington State Patrol Crime Lab in Kelso, Washington, where the contents were weighed and tested by Forensic Scientist Jason Dunn. Mr. Dunn found that the crystalline substance in each package was methamphetamine, more specifically methamphetamine hydrochloride. The methamphetamine in one of the packages weighed 448 grams. The other package contained 449 grams.

10. The location where Detective Dennison stopped the Defendant's vehicle was in a parking lot at 9211 NE 15th Avenue. At that time a Vancouver School District school bus route stop was located at 9211 NE 15th Avenue, substantially less than one

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thousand feet (1000') away from the location where Defendant was stopped. The location where Defendant was in possession of methamphetamine in the van was probably no more than 100 to 200 feet from the school bus route stop on NE 15th Avenue.

Based upon the foregoing Findings of Fact, the Court enters the following

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the Defendant and the subject matter.

2. The crystalline substance in the packages is methamphetamine hydrochloride.

3. At the time he was stopped and contacted by Detective Dennison on the evening of May 10, 2005, Defendant possessed the two packages of methamphetamine hydrochloride which were hidden in the minivan.

4. At that time, Defendant intended to sell and deliver the methamphetamine hydrochloride to another person or persons.

5. The Defendant is therefore guilty of the crime of Possession of a Controlled Substance, Methamphetamine Hydrochloride, with Intent to Deliver, in violation of RCW 69.50.401(1) & (2)(c) as charged in Count I of the Amended Information.

6. The crime was committed in Clark County, in the State of Washington.

7. Defendant committed the crime of Possession of a Controlled Substance Methamphetamine Hydrochloride with Intent to Deliver, within one thousand feet (1000') of a regular school bus route stop, in violation of RCW 69.50.435(1)(b) as charged in the Amended Information.

8. By using the minivan to conceal and transport the controlled substance for the

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purpose of sale and delivery, the current offense was a felony crime in the commission of which a motor vehicle was used under the provisions of RCW 46.20.285.

9. The Court further finds that the current offense involved an actual or attempted sale or transfer of a controlled substance in quantities substantially greater than for personal use, and the crime of Possession of a Controlled Substance Methamphetamine Hydrochloride, with Intent to Deliver, committed by the Defendant as charged in Count I of the Amended Information was therefore a major violation of the Uniform Controlled Substances Act which was more onerous than the typical offense of the same statutory definition.

10. Judgment and Sentence should be entered accordingly.

DONE in open Court this 15 day of July, 2005.

JOHN F. NICHOLS
JUDGE OF THE SUPERIOR COURT

Presented by:

Philip A. Meyers, WSBA#8246
Deputy Prosecuting Attorney

Copy received, approved for entry
this ___ day of July, 2005.

Jason C. Bailes, WSBA#31112
Attorney for Defendant

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APPENDIX "D"

STIPULATED FACTS ON NON-JURY TRIAL

3

FILED
JUL 19 2005
JoAnne McBride, Clerk, Clark C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v. REYES RIOS RUIZ, Defendant.	No. 05-1-01065-7 STIPULATED FACTS ON NON-JURY TRIAL

COME NOW Plaintiff State of Washington, appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, and Defendant Reyes Rios Ruiz, in person and with his attorney Jason C. Bailes, Defendant having previously entered a knowing, intelligent and voluntary written waiver of his right to trial by a jury, and of his right to hear and confront witnesses against him and of his right to call witnesses on his own behalf and to compel their attendance, and the Defendant and the Plaintiff stipulate to the following undisputed facts:

1. That Forensic Scientist Jason Dunn of the Washington State Patrol Crime Laboratory, if called to testify, would state that the methamphetamine in each of the two

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packages he tested in Laboratory Report No. 505-001061 is methamphetamine hydrochloride, a salt of methamphetamine;

2. That Jenny Johnson would testify that she is an employee of the Vancouver School District, that she is familiar with the School District records regarding locations of school bus route stops designated by the School District as they existed on May 10, 2005, and that the Vancouver School District had previously designated a school bus route stop at 9211 NE 15th Avenue, in Clark County, Washington which was in effect on that date and thereafter, and that the location of said route stop is accurately shown on the copy of Clark County Mapping and GIS aerial photo dated May 13, 2005 and labeled Clark County PA Case # PF2005-2505;

3. That Linda Pritchard would testify that she is an employee of the Clark County Department of Assessment and GIS, and that she is familiar with the operation and operating principles of the Clark County GIS mapping system, that the copy of a Clark County Assessment and GIS aerial photo labeled Clark County PA Case # PF2005-2505 is an accurate aerial photo of the location at 9211 NE 15th Avenue in Clark County, Washington, and that the circle on the photo represents a radius of one thousand feet (1000') around a Vancouver School Bus route stop designated on the photo at that address, and that the parking lot of an apartment complex in which Detective Dennison stopped the Defendant's vehicle on the evening of May 10, 2005 is substantially less than 1000' away from the school bus route stop.

4. That 448 grams of methamphetamine is approximately one pound, and that approximately two pounds of methamphetamine is a quantity substantially greater than

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for personal use.

DATED this 19 day of July, 2005.

Philip A. Meyers, WSBA #8246
Deputy Prosecuting Attorney
Attorney for Plaintiff

Jason C. Bailes, WSBA #31112
Attorney for Defendant

L Reyes Rios R.
Reyes Rios Ruiz
Defendant

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APPENDIX "E"

STIPULATION REGARDING EVIDENCE ON NON-JURY TRIAL

2

FILED
JUL 19 2005
JoAnne McBride, Clerk, Clark C.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v: REYES RIOS RUIZ, Defendant.	No. 05-1-01065-7 STIPULATION REGARDING EVIDENCE ON NON-JURY TRIAL

COME NOW Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, and Defendant REYES RIOS RUIZ, in person and with his attorney Jason C. Bailes, Defendant having previously entered a knowing, intelligent and voluntary written waiver of his right to trial by a jury, and of his right to hear and confront witnesses against him and of his right to call witnesses on his own behalf and to compel their attendance, and the Defendant and the Plaintiff stipulate and agree as follows:

1. That trial of the above entitled Cause may be heard by the Court sitting without a jury;

2. That the following may be admitted into evidence and may be considered by the

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Court at trial and the Court may enter its Findings of Fact and Conclusions of Law based upon such evidence:

(a) Testimony of witnesses and exhibits admitted into evidence at the hearing on Motion to Suppress and CrR 3.5 Hearing heard by the Court on July 15, 2005;

(b) The written Stipulation of Facts, with attachments, submitted by the parties;

(c) A copy of the police reports in Clark County Sheriff's Office case Number S05-06664, and attached photocopies of evidence attached thereto;

(d) A copy of the Washington State Patrol Crime Laboratory report signed by Forensic Scientist Jason Dunn, dated 7/14/05 bearing Lab No. 505-001061.

(e) A copy of the Clark County Department of Assessment and GIS aerial photo map dated May 13, 2005, labeled PA Case #PF 2005-2505.

3. That the Court may resolve all questions of fact and enter its Findings of Fact and Conclusions of Law as to the charges and allegations in the Amended Information based upon the foregoing evidence without the necessity of further testimony or other evidence.

DATED this 19th day of July, 2005.

Philip A. Meyers, WSBA #8246
Deputy Prosecuting Attorney
Attorney for Plaintiff

Jason C. Balles, WSBA #31112
Attorney for Defendant

Reyes Rios Ruiz
Defendant

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